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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CICELY BREWSTER,

Plaintiff and Appellant,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee, etc.,

Defendant and Respondent.

E071834

(Super.Ct.No. RIC1411494)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge.
Affirmed.

J. Wright Law Group and Jamie Wright for Plaintiff and Appellant.

Wright, Finlay & Zak, Jonathan D. Fink, and Kristina M. Pelletier for Defendant
and Respondent.

This is appellant Cicely Brewster's fifth attempt to regain her former residence,
which she lost in foreclosure in 2012 after she stopped making payments on her
refinanced mortgage. In 2015, the trial court entered judgment in favor of respondent

Deutsche Bank National Trust Company (Deutsche) in what was Brewster's fourth lawsuit against Deutsche (the 2015 judgment). Brewster never properly appealed that judgment (though she did appeal one of the rulings in her fourth lawsuit, which we affirmed in an unpublished opinion in April 2018). Then, in September 2018, more than three years after its entry, Brewster moved to vacate the 2015 judgment under Code of Civil Procedure section 473, subdivision (d), on the ground it was void. Deutsche opposed the motion and the trial court denied it, concluding Brewster failed to establish the judgment was facially void. Brewster now appeals that ruling.

We affirm. Brewster has presented no evidence the 2015 judgment is void. Instead, her motion to vacate simply reiterates her arguments that Deutsche lacked foreclosure authority, arguments the trial court rejected when it issued the 2015 judgment.

I

FACTS

In October 2006, Brewster refinanced the mortgage on her Moreno Valley home (the property) by borrowing \$384,750 from American Brokers Conduit (ABC).¹ In the spring of 2011, she stopped making her mortgage payments. In August 2011, Deutsche acquired Brewster's loan and deed of trust, and recorded a notice of default, informing her that she was over \$8,000 behind in her payments. In October 2011, Power Default

¹ We take most of the facts from our prior opinion.

Services, Inc. (PDSI) acquired the loan and the deed of trust. Brewster remained in default on her mortgage payments, and PDSI noticed a trustee's sale for December 2011.

At this point, Brewster filed her first lawsuit against Deutsche, alleging theft, fraud, and violation of her Fourth Amendment right against unlawful seizure. The trial court (Riverside County Superior Court) sustained Deutsche's demurrer and dismissed her complaint with prejudice.

The trustee's sale took place in June 2012, and Deutsche purchased the property. Brewster remained on the property, however, prompting Deutsche to file an unlawful detainer action. Deutsche prevailed in that action, Brewster unsuccessfully appealed, and on February 10, 2015, she was evicted.

While the unlawful detainer action was pending, Brewster filed for bankruptcy and filed a (second) lawsuit against Deutsche in the bankruptcy court, arguing the bank lacked authority to initiate the foreclosure proceedings because its assignment of her loan occurred after she had defaulted and was therefore invalid. The bankruptcy court dismissed the action in Deutsche's favor and the federal district court affirmed. In December 2012, Brewster filed her third lawsuit against Deutsche, this time back in Riverside County Superior Court, but ended up seeking voluntary dismissal.

In December 2014, Brewster filed her fourth lawsuit against Deutsche, which is the subject of this appeal. Her complaint contained the same allegations from the bankruptcy action. This time, she added ABC as a defendant, as well as all parties claiming an interest in the property (the Doe defendants). Deutsche demurred, arguing

the action was barred by res judicata and collateral estoppel. Deutsche also argued the action failed as a matter of law, because Brewster had never tendered the outstanding balance on her loan and her substantive claim of invalid debt assignment lacked merit. In May 2015, the trial court sustained the demurrer without leave to amend and entered the 2015 judgment at issue here—a “Judgment of Dismissal with Prejudice” in favor of Deutsche. On June 8, 2015, Deutsche filed with the court and served on Brewster a Notice of Entry of the 2015 judgment.² From that date, she had 60 days to file a notice of appeal if she wanted to challenge the 2015 judgment. (Cal. Rules of Court, rule 8.104(a)(1)(B).)

Several months later, Brewster requested and obtained from the clerk of the trial court entry of default against ABC in the same action, as well as dismissal of the unnamed Doe defendants. She then applied to the trial court to enter a default judgment under Code of Civil Procedure section 585 quieting title in her favor against ABC. After holding an evidentiary hearing, the court denied her request and dismissed her complaint.

In September 2016, Brewster filed a notice of appeal, indicating she was challenging the trial court’s 2016 order refusing to enter default judgment against ABC, as well as the 2015 judgment. We dismissed her appeal of the 2015 judgment as untimely and affirmed the trial court’s refusal to enter default judgment against ABC. As we explained in our previous opinion, quiet title plaintiffs like Brewster are not

² We grant Deutsche’s request to take judicial notice of the Notice of Entry of the 2015 judgment and the proof of service showing it was mailed to Brewster. (Evid. Code, § 452, subd. (d)(1).)

automatically entitled to default judgment when the defendant fails to respond, but instead must prove their title to the property at an evidentiary hearing. (Code Civ. Proc., § 764.010; *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1501-1502.) Because the trial court had already found Deutsche held valid title to the property, it correctly denied her request to quiet title in her favor against ABC.

Two years later, in September 2018, Brewster filed a motion to vacate the 2015 judgment, arguing it was void under Code of Civil Procedure section 473, subdivision (d) because Deutsche was untimely (and therefore invalidly) assigned her debt and thus lacked authority to foreclose. Deutsche opposed the motion, arguing Brewster had not shown the judgment was void, but was instead rearguing the merits of her wrongful foreclosure claim from her fourth lawsuit. At the hearing on Brewster’s motion, the trial court ruled she had “failed to establish the judgment is facially void so as to be set aside under CCP 473(d).”

II

ANALYSIS

Although Brewster has appealed the trial court’s denial of her motion to vacate the 2015 judgment, she makes no argument on appeal as to why that decision was erroneous. Instead, she reargues the merits of the 2015 judgment and explains why she believes the trial court should not have sustained Deutsche’s demurrer.

“The burden of affirmatively demonstrating error is on the appellant.”

(*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.)

“An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Thus, “[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” (*Ibid.*) In any event, having independently reviewed the record (*Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1434, 1440), we conclude the trial court properly denied the motion to vacate.

Where, as here, a party makes a motion to vacate more than six months after entry of a judgment, a trial court may grant the motion only if the judgment is void *on its face*. (Code Civ. Proc., § 473, subd. (d); *Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1021.) “This does not hinge on evidence: A void judgment’s invalidity appears on the *face of the record*, including the proof of service.” (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181.)

The fundamental problem with Brewster’s motion to vacate is that, like her appellate briefs, it simply reasserts the merits of her unsuccessful wrongful foreclosure claims against Deutsche. Her motion pays lip service to Code of Civil Procedure section 473 and claims the 2015 judgment is void, but instead of showing how the judgment is void on its face (e.g., for improper service), she argues Deutsche was not validly assigned her debt and had no authority to foreclose. She also argues Deutsche engaged in “illegal debt collection activity.” These claims relate to the merits of her lawsuit, not the facial

validity of the 2015 judgment, and the time to litigate the former has long passed. (Cal. Rules of Court, rule 8.104(a)(1)(B) [party has 60 days after being served with the Notice of Entry of a judgment to file a notice of appeal].) Simply put, Brewster may not revive the substance of her prior lawsuit with a motion to vacate under Code of Civil Procedure section 473, subdivision (d). Because she has not shown the 2015 judgment is facially void, the trial court properly denied her motion.

III

DISPOSITION

We affirm. Appellant shall bear the costs of appeal.

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SLOUGH
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.